

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BENJAMIN WITTES,
1775 Massachusetts Avenue NW
Washington, DC 20036,

SCOTT R. ANDERSON,
1775 Massachusetts Avenue NW
Washington, DC 20036, and

THE PROTECT DEMOCRACY PROJECT,
INC.
2020 Pennsylvania Ave., NW, #163
Washington, D.C. 20006,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530,

Defendant.

Civil Action No. 19-2823

COMPLAINT

Plaintiffs Benjamin Wittes, Scott R. Anderson, and The Protect Democracy Project, Inc.

(“Protect Democracy”), by their undersigned attorneys, allege:

INTRODUCTION

1. On August 26, 2019, *The Washington Post* and *The New York Times* published reports indicating that it is highly likely that federal prosecutors will soon indict former FBI Deputy Director Andrew G. McCabe on charges of lying to federal agents.¹ On September 12,

¹ Adam Goldman, *Prosecutors Near Decision on Whether to Seek an Andrew McCabe Indictment*, N.Y. Times (Aug. 26, 2019), <https://www.nytimes.com/2019/08/26/us/politics/andrew-mccabe-indictment-decision.html>; Matt Zapotosky, *Justice Dept. Could Be Nearing Decision on Whether to Charge Andrew McCabe*, Wash. Post (Aug. 26,

2019, these papers reported that the Department of Justice had authorized prosecutors to charge Mr. McCabe after rejecting his appeal of the U.S. Attorney's decision to move forward.² The grand jury was reportedly summonsed back, but then released the same day, without any public charges having been filed,³ indicating that the grand jury may have refused to indict Mr. McCabe.

2. Although Mr. McCabe was fired after a DOJ Inspector General investigation concluded that Mr. McCabe made false statements to OIG investigators about whether he authorized certain communications to the media, an indictment of a government official for false statements made in an internal investigation is exceedingly rare, especially when the official is terminated as a result of the conduct.

3. Indeed, there are numerous publicly available examples of government officials who were not criminally investigated or prosecuted for similar conduct.⁴

4. Most troubling, the only visible factor that could clearly explain the DOJ's apparent intention to charge Mr. McCabe is the sustained campaign President Trump has waged against Mr. McCabe, publicly demanding both that he be fired and criminally investigated.⁵

2019), https://www.washingtonpost.com/national-security/justice-dept-could-be-nearing-decision-on-whether-to-charge-andrew-mccabe/2019/08/26/0e1a636c-c840-11e9-a1fe-ca46e8d573c0_story.html.

² Matt Zapotosky & Spencer S. Hsu, *Justice Department Authorized Prosecutors to Charge Andrew McCabe*, Wash. Post (Sept. 12, 2019), https://beta.washingtonpost.com/national-security/justice-dept-authorized-prosecutors-to-charge-andrew-mccabe/2019/09/12/5b0d48ea-d418-11e9-9343-40db57cf6abd_story.html; Adam Goldman & Katie Brenner, *Justice Dept. Rejects Andrew McCabe's Bid to Avoid Charges*, N.Y. Times (Sept. 12, 2019), <https://www.nytimes.com/2019/09/12/us/politics/andrew-mccabe-fbi.html>.

³ *Id.*

⁴ Benjamin Wittes, *Thoughts on the Impending Prosecution of Andrew McCabe*, Lawfare (Aug. 27, 2019), <https://www.lawfareblog.com/thoughts-impending-prosecution-andrew-mccabe> (listing examples).

⁵ See, e.g., Donald J. Trump (@realDonaldTrump), Twitter, (July 24, 2019, 4:36 A.M.), <https://twitter.com/realdonaldtrump/status/1153992334054440960>; Donald J. Trump (@realDonaldTrump), Twitter, (Dec. 23, 2017, 12:27 P.M.), <https://twitter.com/realdonaldtrump/status/944665687292817415?lang=en>; see also Wittes, *supra* note 4 (collecting examples).

5. Any involvement by the White House in a criminal investigation of Mr. McCabe or decision on whether to indict Mr. McCabe would violate longstanding norms⁶ and the White House's own policy mandating that the White House refrain from interfering in party-specific DOJ matters.⁷ It would also raise serious legal ethics concerns for DOJ prosecutors and constitutional questions.⁸ There is an urgent need to inform the public about these grave matters.

6. Accordingly, on September 3 and September 6, Plaintiffs submitted two Freedom of Information Act ("FOIA") requests, the first seeking expedited production of records reflecting the White House's involvement, if any, in the criminal investigation and potential prosecution of Mr. McCabe, and the second seeking expedited production of email messages former Acting Attorney General Matthew Whitaker may have sent to specific DOJ personnel regarding Mr. McCabe.

7. Plaintiffs bring this action against the DOJ to compel compliance with FOIA, 5 U.S.C. § 552, and DOJ's implementing regulations, 28 C.F.R. §§ 16.1–16.11.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

9. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

⁶ See *Protecting Independent Law Enforcement*, <https://protectdemocracy.org/protecting-independent-law-enforcement/> (last visited Sept. 17, 2019).

⁷ See Mem. from Donald F. McGahn II, Counsel to the President, re: Communications Restrictions with Personnel at the Department of Justice (Jan. 27, 2017), available at <https://www.politico.com/f/?id=0000015a-dde8-d23c-a7ff-dfef4d530000>.

⁸ See Protect Democracy, *No "Absolute Right" to Control DOJ: Constitutional Limits on White House Interference with Law Enforcement Matters*, (Mar. 2018), <https://protectdemocracy.org/resource-library/document/no-absolute-right-control-doj/> (explaining that when the White House intervenes in how the law is enforced to benefit allies or target its opponents, it violates the President's constitutional obligation to ensure that the laws are faithfully executed, as well as core constitutional principles of due process, equal treatment under the law, and the First Amendment right to participate in the political process).

10. DOJ has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I). Plaintiffs have therefore exhausted all administrative remedies, pursuant to 5 U.S.C. § 552(a)(6)(C).

PARTIES

A. Plaintiffs

11. Plaintiff Benjamin Wittes is the Editor-in-Chief of *Lawfare*, an online publication published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization. Lawfare is dedicated to informing public understanding on the operations and activities of the federal government.

12. Plaintiff Scott R. Anderson is a Senior Editor of *Lawfare* and Fellow in Governance Studies at the Brookings Institution.

13. Plaintiff Protect Democracy is a non-partisan not-for-profit organization that operates in Washington, D.C., and is engaged in disseminating newsworthy information and analysis.

14. Plaintiffs intend to make public records obtained through these FOIA requests and provide information about and analysis of the records as appropriate on *Lawfare*'s website (www.lawfareblog.com) and Protect Democracy's website (www.protectdemocracy.org).

B. Defendant

15. Defendant DOJ is a federal agency within the meaning of 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551 that has possession and control of the records that Plaintiffs seek.

FACTUAL ALLEGATIONS

16. On September 3, 2019, Plaintiffs sent a FOIA request (the "First Request") to Defendant, seeking the following records:

- (a) Records of, reflecting, or referencing any communications between President Trump and any individual(s) at the Department of Justice regarding Andrew McCabe, which records also contain any one of the following words (or permutations thereof): prosecute, indict, criminal, charge, punish, prison, jail, lock up, convict, grand jury.
- (b) Records of, reflecting, or referencing any communications between White House personnel and any individual(s) at the Department of Justice regarding Andrew McCabe, which records also contain any one of the following words (or permutations thereof): prosecute, indict, criminal, charge, punish, prison, jail, lock up, convict, grand jury.
- (c) Any emails, memorandum, and other written correspondence from, to, or copying Attorney General William Barr and/or Deputy Attorney General Jeffrey Rosen referencing (a) “Trump,” “President,” “POTUS,” and/or “White House” and (b) “McCabe,” which correspondence also contains any one of the following words (or permutations thereof): prosecute, indict, criminal, charge, punish, prison, jail, lock up, convict, grand jury.

A true and correct copy of Plaintiffs’ First Request is attached as Exhibit A.

17. Defendant labeled Plaintiffs’ First Request, “DOJ-2019-006773.”

18. On September 6, 2019, Plaintiffs sent another FOIA request (the “Second Request”) to Defendant, seeking any e-mail messages from Matthew Whitaker received by Christopher Ott, George Toscas, or Adam Hickey making reference to Andrew McCabe in the period from March 1, 2018, to March 31, 2018. A true and correct copy of the body of Plaintiffs’ Second Request, which was copied and pasted into DOJ’s FOIA portal, is attached as Exhibit B.

19. Defendant labeled Plaintiffs’ Second Request, “DOJ-2019-006850.”

20. Plaintiffs sought fee waivers pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k). Ex. A at 5–6; Ex. B at 2.

21. Plaintiffs demonstrated a compelling need for the fee waivers based on their statuses as representatives of the media and because disclosure of the information “is likely to

contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(ii)-(iii).

22. Plaintiffs also requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). Ex. A at 2–5; Ex. B at 2–3. Plaintiffs’ requests were narrowly tailored to make it easy for the DOJ to respond to them in an expedited fashion.

23. Plaintiffs demonstrated a compelling need for expedited processing based on the “urgency to inform the public about an actual or alleged federal government activity” and because the requests concern a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(ii), (iv).

24. The need for expedited processing has become even more pertinent given reports of the DOJ’s recent rejection of Mr. McCabe’s appeal of the U.S. Attorney’s Office’s decision to move forward with charges against him.⁹

25. On September 13, 2019, Defendant denied expedited processing for Plaintiffs’ First Request on the ground that Plaintiffs “ha[d] not provided enough information concerning the statutory requirements for expedition[.]” A true and correct copy of Defendant’s letter denying expedited processing is attached as Exhibit C.

26. Defendant has thus far failed to respond to Plaintiffs’ request for expedited processing of their Second Request.

27. Defendant has no lawful basis for declining to grant Plaintiffs’ requests for expedited processing or for producing any responsive records requested by Plaintiffs.

⁹ Zapotosky & Hsu, *supra* note 2; Goldman & Brenner, *supra* note 2.

**FIRST CLAIM FOR RELIEF
(Violation of FOIA, 5. U.S.C. § 552)**

28. Plaintiffs re-allege and incorporate by reference all other paragraphs.

29. Defendant DOJ is subject to FOIA and must therefore release in response to FOIA requests any disclosable records in its possession at the time of the requests and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

30. Defendant's denial of and failure to respond to Plaintiffs' requests for expedited processing violates FOIA and DOJ's implementing regulations. *See* 5 U.S.C. § 552(a)(6)(E)(i); 28 C.F.R. § 16.5(e)(1)(ii), (iv).

31. Defendant has no lawful basis for declining to expeditiously produce the records requested by Plaintiffs under FOIA.

32. Accordingly, Plaintiffs are entitled to an order compelling the DOJ to grant Plaintiffs' requests for expedited processing and to release, as soon as practicable, any responsive documents.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Declare that Plaintiffs are entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E)(i) and 28 C.F.R. § 16.5(e)(1)(ii), (iv), and fee waivers under 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k);
- b. Declare that the records sought by Plaintiffs in their FOIA requests are public records under 5 U.S.C. § 552(a)(2)(D), which should be disclosed pursuant to 5 U.S.C. §§ 552(a)(6)(A) and 552(a)(3)(A) and Defendant's corresponding regulations;
- c. Order Defendant to grant Plaintiffs' requests for expedited processing and fee waivers;
- d. Order Defendant, by a date certain, to conduct an adequate search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiffs' requests;

- e. Order Defendant, by a date certain, to produce to Plaintiffs any and all non-exempt records or portions of records responsive to Plaintiffs' request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;
- f. Award Plaintiffs the costs and reasonable attorney's fees incurred in this action, *see* 5 U.S.C. § 552(a)(4)(E);
- g. Grant Plaintiffs such other relief as the Court deems appropriate.

Dated: September 20, 2019

Respectfully submitted,

THE PROTECT DEMOCRACY PROJECT, INC.

By: /s/ Justin Florence

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Counsel for Plaintiffs[†]

* *Pro hac vice* application forthcoming.

[†] Harvard Law Student Joseph Choe, '21, helped prepare this complaint. The complaint does not purport to represent the institutional views, if any, of Harvard Law School.

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS Benjamin Wittes, Scott R. Anderson, and The Protect Democracy Project, Inc. (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS U.S. Department of Justice COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Justin Florence, Kristy Parker, John Langford, Deana K. El-Mallawany The Protect Democracy Project, Inc. 15 Main Street, Suite 312, Watertown, MA 02472 Telephone: (202)-774-4234	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	<input type="radio"/> F. Pro Se General Civil
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<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) <i>*(If pro se, select this deck)*</i>	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi-district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge
 ☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 552

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 9/20/2019	SIGNATURE OF ATTORNEY OF RECORD: /s/ Justin Florence
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

EXHIBIT A

September 3, 2019

Via FOIA.gov

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, N.W., Suite 11050
Washington, DC 20530-0001
Tel: (202) 514-3642

Re: Freedom of Information Act Request for Expedited Production of Records

Dear Mr. Hibbard:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the U.S. Department of Justice’s (“DOJ”) implementing regulations, 28 C.F.R. §§ 16.1–16.11, we request expedited production of the following records concerning the White House’s involvement, if any, in the investigation and potential prosecution of former Federal Bureau of Investigations (“FBI”) Deputy Director Andrew G. McCabe.

1. Records of, reflecting, or referencing any communications between President Trump and any individual(s) at the Department of Justice regarding Andrew McCabe, which records also contain any one of the following words (or permutations thereof): prosecute, indict, criminal, charge, punish, prison, jail, lock up, convict, grand jury.
2. Records of, reflecting, or referencing any communications between White House personnel and any individual(s) at the Department of Justice regarding Andrew McCabe, which records also contain any one of the following words (or permutations thereof): prosecute, indict, criminal, charge, punish, prison, jail, lock up, convict, grand jury.
3. Any emails, memorandum, and other written correspondence from, to, or copying Attorney General William Barr and/or Deputy Attorney General Jeffrey Rosen referencing (a) “Trump,” “President,” “POTUS,” and/or “White House” and (b) “McCabe,” which correspondence also contains any one of the following words (or permutations thereof): prosecute, indict, criminal, charge, punish, prison, jail, lock up, convict, grand jury.

This request is for documents dating from March 16, 2018, to the present. For purposes of this request, “records” includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; texts; images; videos; audio recordings; e-mails; e-mail attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials.

Where a record contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request.

If you make a determination that any responsive record, or any segment within a record is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. §§ 552(a)(8)(A)(ii) & 552(b).

We also ask that you provide responsive electronic records in their native file format or a generally accessible electronic format (e.g., for tabular data, XLS or CSV). *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, please provide the records electronically in a text-searchable, static-image format (e.g., PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

Request for Expedited Processing

We request that you expedite the processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). This request meets the criteria for expedited processing both because (1) there is “[a]n urgency to inform the public about an actual or alleged federal government activity” and the request is “made by a person who is primarily engaged in disseminating information”; and (2) the request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(ii), (iv). In addition to the reasons laid out below, we incorporate the paragraphs of the Background section of this request as if fully set forth herein and we certify that both the Background section and this section are true and correct to the best of our knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); 28 C.F.R. § 16.5(e)(3).

1. Urgency to Inform the Public

This request is entitled to expedited processing under 28 C.F.R. § 16.5(e)(ii) and 5 U.S.C. § 552(a)(6)(E)(v)(II) because these records are urgently needed to inform the public about actual or alleged government activity, and we are primarily engaged in disseminating information to the public.

The requested records relate to President Trump’s and/or the White House’s possible interference into the DOJ’s criminal investigation and prosecution of McCabe. Ever since McCabe began leading the FBI’s investigation into links between the Russian government and President Trump’s 2016 campaign, the President has launched a series of attacks on McCabe.¹ It

¹ *See* Complaint ¶¶ 47–104, *McCabe v. Barr*, No. 19-cv-2399 (D.D.C. August 8, 2019), ECF No. 1 (hereinafter “McCabe Complaint”), available at <https://int.nyt.com/data/documenthelper/1618-andrew-mccabe-s-civil-lawsuit/3be1ef9625dfdece717f/optimized/full.pdf#page=1>. The series of attacks are also listed in *Lawfare*’s recent

is highly likely that prosecutors will decide whether to indict McCabe within days.² Although the Justice Department inspector general has found fault in certain conduct by McCabe,³ an “indictment of a former top F.B.I. official is extremely rare,” particularly for this type of misconduct.⁴ Any direct involvement in either the investigation or the decision whether to indict McCabe would violate longstanding DOJ norms,⁵ the White House’s own policy,⁶ and raise serious constitutional questions,⁷ about which it is urgently necessary to inform the public. President Trump’s attacks on McCabe and the government’s investigation of McCabe have been the subject of sustained and ongoing news coverage.⁸

Requesters are primarily engaged in disseminating information to the public and plan to disseminate records responsive to this request to the public. To qualify as a “person primarily engaged in disseminating information to the public,” a requester need only demonstrate that “information dissemination be the main and not merely an incidental activity of the requestor.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298

article, Benjamin Wittes, *Thoughts on the Impending Prosecution of Andrew McCabe*, Lawfare (Aug. 27, 2019), <https://www.lawfareblog.com/thoughts-impending-prosecution-andrew-mccabe>.

² Adam Goldman, *Prosecutors Near Decision on Whether to Seek an Andrew McCabe Indictment*, N.Y. Times, Aug. 26, 2019, <https://www.nytimes.com/2019/08/26/us/politics/andrew-mccabe-indictment-decision.html>; Benjamin Wittes, *Thoughts on the Impending Prosecution of Andrew McCabe*, Lawfare (Aug. 27, 2019), <https://www.lawfareblog.com/thoughts-impending-prosecution-andrew-mccabe>.

³ Office of Inspector General, U.S. Department of Justice, *A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe* (Feb. 2018).

⁴ Adam Goldman, *Prosecutors Near Decision on Whether to Seek an Andrew McCabe Indictment*, N.Y. Times, Aug. 26, 2019, <https://www.nytimes.com/2019/08/26/us/politics/andrew-mccabe-indictment-decision.html>; see also Benjamin Wittes, *Thoughts on the Impending Prosecution of Andrew McCabe*, Lawfare (Aug. 27, 2019), <https://www.lawfareblog.com/thoughts-impending-prosecution-andrew-mccabe>.

⁵ See *Protecting Independent Law Enforcement*, <https://protectdemocracy.org/protecting-independent-law-enforcement/> (last visited Aug. 29, 2019).

⁶ See Mem. from Donald F. McGahn II, Counsel to the President, re: Communications Restrictions with Personnel at the Department of Justice (Jan. 27, 2017), available at <https://www.politico.com/f/?id=0000015a-dde8-d23c-a7ff-dfef4d530000>.

⁷ See *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (“[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out”); *United States v. Armstrong*, 517 U.S. 456 (1996); *United States v. Batchelder*, 442 U.S. 114 (1979); *Protecting Independent Law Enforcement*, <https://protectdemocracy.org/protecting-independent-law-enforcement/> (last visited Aug. 29, 2019); Mem. from Donald F. McGahn II, Counsel to the President, re: Communications Restrictions with Personnel at the Department of Justice (Jan. 27, 2017), available at <https://www.politico.com/f/?id=0000015a-dde8-d23c-a7ff-dfef4d530000>.

⁸ See, e.g., Adam Goldman, *Andrew McCabe, F.B.I.’s Embattled Deputy, Is Expected to Retire*, N.Y. Times, Dec. 23, 2017, <https://www.nytimes.com/2017/12/23/us/politics/mccabe-fbi-trump-russia.html>; Jenna Johnson & William Branigin, *Trump Renews Twitter Attacks on Attorney General Jeff Sessions*, Wash. Post, July 25, 2017, https://www.washingtonpost.com/politics/trump-renews-twitter-attacks-on-attorney-general-jeff-sessions/2017/07/25/003d15ca-7124-11e7-8839-ec48ec4cae25_story.html; Kyle Cheney, *Andrew McCabe Sues DOJ, Claims His Firing Was ‘Retaliation’ Directed By Trump*, POLITICO (Aug. 8, 2019), <https://www.politico.com/story/2019/08/08/andrew-mccabe-sues-doj-fbi-1453351>; Matt Zaposky, *Justice Dept. Could Be Nearing Decision on Whether To Charge Andrew McCabe*, Wash. Post, Aug. 26, 2019, https://www.washingtonpost.com/national-security/justice-dept-could-be-nearing-decision-on-whether-to-charge-andrew-mccabe/2019/08/26/0e1a636c-c840-11e9-a1fe-ca46e8d573c0_story.html; Quinta Jurecic, *Will Trump Succeed in Prosecuting Andrew McCabe?*, N.Y. Times: Op-Ed, Aug. 28, 2019, <https://www.nytimes.com/2019/08/28/opinion/andrew-mccabe-trump-fbi.html>. See also *supra* note 2.

(D.D.C. 2017) (alteration omitted). Information dissemination, however, need not be the requester's sole occupation. *Id.* Disseminating newsworthy information and analysis to the public is our main activity.

Ben Wittes is the co-founder and editor-in-chief of *Lawfare*, an online publication dedicated to analyzing how actions taken or contemplated to protect the nation interact with the nation's laws and legal institutions.⁹ He has more than 20 years of experience studying issues of U.S. national security law and policy as a journalist, scholar, writer, and public commentator. Scott R. Anderson, is a Senior Editor for *Lawfare*, where he has both authored and edited dozens of pieces,¹⁰ as well as a Fellow in Governance Studies at the Brookings Institution. Through their work at *Lawfare* and elsewhere, both Wittes and Anderson qualify as being primarily engaged in disseminating information to the public.

Protect Democracy also qualifies as being primarily engaged in disseminating newsworthy information. It intends to disseminate the information obtained; it furthers its core mission by informing public understanding of the operations and activities of government, including by gathering and disseminating information that is likely to contribute significantly to the public understanding of the independence of the Department of Justice from political interference; and it intends to give the public access to documents transmitted via FOIA on its website. For these reasons, Protect Democracy also qualifies as being primarily engaged in disseminating newsworthy information. *Protect Democracy Project, Inc.*, 263 F. Supp. 3d at 298.

This request is accordingly entitled to expedited processing under 28 C.F.R. § 16.5(e)(ii) and 5 U.S.C. § 552(a)(6)(E)(v)(II).

2. There exist possible questions about the government's integrity that affect public confidence

This request is also entitled to expedited processing because it concerns a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence. 28 C.F.R. § 16.5(e)(iv).

As noted above, President Trump's public attacks on McCabe and the government's investigation of McCabe are the subject of widespread and exceptional media interest.¹¹

The White House's involvement in specific-party enforcement matters implicates integrity issues of the highest order. The Constitution's Take Care, Due Process, and Equal Protection Clauses, along with the First Amendment, limit the White House's ability to influence or interfere with specific prosecutions.¹² In addition, the White House's interference in specific

⁹ See *About Lawfare: A Brief History of the Term and the Site*, Lawfare, <https://www.lawfareblog.com/about-lawfare-brief-history-term-and-site> (last visited Aug. 29, 2019).

¹⁰ See *Scott Anderson*, Lawfare, <https://www.lawfareblog.com/contributors/sanderson> (last visited Aug. 31, 2019).

¹¹ See *supra* note 23.

¹² See *Protect Democracy, No "Absolute Right" to Control DOJ: Constitutional Limits on White House Interference with Law Enforcement Matters* (Mar. 2018), <https://protectdemocracy.org/resource-library/document/no-absolute-right-control-doj/>.

prosecutions renders prosecutors conflicted, dividing their loyalties between the neutral pursuit of justice and the White House's own aims. It "calls into question the objectivity of those charged with bringing a defendant to judgment," and "creates an appearance of impropriety that diminishes faith in the fairness of the criminal justice system in general."¹³

Here, as explained above, President Trump's sustained attacks on McCabe, coupled with the lack of public evidence supporting criminal charges, gives rise to serious questions about the possibility of improper interference in DOJ's investigation and potential prosecution of McCabe.¹⁴ It creates an appearance of impropriety that diminishes public confidence in the fairness of the investigation into McCabe¹⁵ and the criminal justice system more broadly.

For these reasons, this request is also entitled to expedited processing under 28 C.F.R. § 16.5(e)(iv).

Request for Fee Waiver

We request that all fees be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)–(iii) and 28 C.F.R. § 16.10(k). FOIA requires that fees be waived if records are requested by "a representative of the news media" and "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(ii)–(iii). FOIA clarifies that "a representative of the news media" "means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Id.* § 552(a)(4)(A)(ii). And DOJ's implementing regulations specify that information is likely to contribute significantly to public understanding where disclosure is "meaningfully informative about government operations or activities" and will "contribute to the understanding of a reasonably broad audience of persons interested in the subject." 28 C.F.R. § 16.10(k)(2)(ii).

We have no commercial interest in this request. Ben Wittes and Scott R. Anderson are representatives of the news media. As noted above, Wittes and Anderson are primarily engaged in editing and publishing pieces providing reporting, opinions, and analysis of newsworthy legal developments. *See supra* at p. 4 & nn.9-10. As such, Wittes and Anderson "gather[] information of potential interest to a segment of the public, us[e their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii).

In addition, the disclosure of the requested records will be meaningfully informative about the operations and activities of the DOJ, President Trump, and the White House, and will contribute to the understanding of a reasonably broad audience of persons interested in the subject. *See supra* pp. 2–5. The records will be meaningfully informative as the responsive records we are requesting will reveal the degree of potentially inappropriate executive branch

¹³ *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 810–11 (1987).

¹⁴ *See Benjamin Wittes, Thoughts on the Impending Prosecution of Andrew McCabe*, Lawfare (Aug. 27, 2019), <https://www.lawfareblog.com/thoughts-impending-prosecution-andrew-mccabe>.

¹⁵ *See id.*; Quinta Jurecic, *Will Trump Succeed in Prosecuting Andrew McCabe?*, N.Y. Times: Op-Ed, Aug. 28, 2019, <https://www.nytimes.com/2019/08/28/opinion/andrew-mccabe-trump-fbi.html>.

Page 6 of 6

involvement in a high-profile criminal prosecution of a former senior FBI official. *See* 28 C.F.R. § 16.10(k)(2)(ii)(A). And disclosure of the records must be presumed to contribute to the understanding of a reasonably broad audience, as Wittes and Anderson are representatives of the news media. *Id.* § 16.10(k)(2)(ii)(B).

* * *

Thank you for your attention to our request. We expect to receive a determination on expedited processing within 10 calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(e)(4). We would be happy to discuss its terms with you over the phone or via email to clarify any aspect of the request or, where reasonable, to narrow the request.

Sincerely,

Benjamin Wittes
Editor in Chief, *Lawfare*
1775 Massachusetts Ave. NW
Washington, D.C. 20036
Phone: (202) 797-4368
Email: benjamin.wittes@gmail.com

Scott R. Anderson
Fellow in Governance Studies at the Brookings
Institution
Senior Editor, *Lawfare*
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John Langford
The Protect Democracy Project, Inc.
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Los Angeles, CA 90013
Email: john.langford@protectdemocracy.org
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Deana K. El-Mallawany
The Protect Democracy Project, Inc.
15 Main Street, Ste. 312
Watertown, MA 02472
Phone: (202) 579-4582
Email: deana.elmallawany@protectdemocracy.org

EXHIBIT B

September 6, 2019

Mr. Douglas Hibbard
Chief, Initial Request Staff
U.S. Department of Justice
441 G St, N.W., 6th Floor
Washington, D.C. 20530-0001
202-514-3642 (phone)

Re: FOIA Request for Correspondence Relating to Andrew McCabe

Dear sir or madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we hereby request that your office produce the following records within 20 business days:

1. Any e-mail messages from Matthew Whitaker received by Christopher Ott, George Toscas, or Adam Hickey making reference to Andrew McCabe in the period from March 1, 2018, to March 31, 2018.

We also request any records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

If you make a determination that any responsive record, or any segment within a record is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. §§ 552(a)(8)(A)(ii) & 552(b).

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

We are the editor-in-chief and senior editor for *Lawfare*, an online publication dedicated to informing public understanding on operations and activities of the government. Lawfare is published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) nonprofit public policy organization. This request is submitted in connection with *Lawfare*’s mission to publish information that is likely to contribute significantly to the public understanding of federal agency activities related to law and national security. Specifically, the Justice Department is reportedly contemplating criminal charges against former Acting Director of the FBI Andrew McCabe. McCabe has, in turn, alleged that his March 2018 termination and subsequent actions against him are part of a politically motivated campaign against him that President Trump and his associates are pursuing. See Adam Goldman, “Prosecutors Near Decision On Whether to Seek an Andrew McCabe Indictment,” *The New York Times*, Aug. 26, 2019, <https://nyti.ms/2UeGfqp>. Correspondence among and between relevant senior Justice Department officials will provide the public with valuable information regarding possible politically-motivated involvement in the March 2018 decision to fire McCabe.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, we are entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as “a representative of the news media.” *Id.* *Lawfare* is a “news media organization[]” that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). We intend to give the public access to documents transmitted via FOIA on our website, <https://www.lawfareblog.com>, and to provide information about and analysis of those documents as appropriate.

EXPEDITED PROCESSING

FOIA provides for expedited processing where a requestor “demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). It defines “compelling need” to include situations where a “request [is] made by a person primarily engaged in disseminating information” and there exists an “urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(v). Relevant Justice Department regulations further indicate that “[r]equests and

appeals shall be processed on an expedited basis whenever it is determined that[,]” inter alia, it relates to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

Lawfare is an organization primarily engaged in the dissemination of information. As noted above, numerous media reports have indicated that the Justice Department is considering imminent criminal charges against McCabe. If these charges are ultimately brought in part in response to political pressure being applied by figures within the Trump administration, then this would raise serious concerns with the integrity of the Justice Department and broader Trump administration. This, in turn, may undermine public confidence in relevant officials and institutions.

* * *

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact us by phone or email if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

/s/ Benjamin Wittes

Benjamin Wittes

Editor in Chief, Lawfare

Senior Fellow in Governance Studies, The Brookings Institution

P.O. Box 33226

Washington, D.C. 20033-3226

(202) 797- 4368

benjamin.wittes@gmail.com

/s/ Scott R. Anderson

Scott R. Anderson

Senior Editor, Lawfare

Fellow in Governance Studies, The Brookings Institution

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EXHIBIT C



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

September 13, 2019

Deana K. El-Mallawany
Protect Democracy Project, Inc
15 Main Street Ste. 312
Watertown, MA
deana.ellmallawany@protectdemocracy.org

Re: DOJ-2019-006773
DRH:VAV:GMG

Dear M. Deana K Mallawany:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on September 3, 2019, in which you requested specified records between the Department and the White House pertaining to former Federal Bureau of Investigation Deputy Director Andrew McCabe, dating from March 16, 2018.

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

You have also requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(e)(2). Please be advised the Director has determined that your request for expedited processing should be denied. Although your request for expedited processing has been denied; it has been assigned to an analyst in this Office and our processing of it has been initiated.

To the extent that your request requires a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety

-2-

of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may also contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal at <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, appearing to read "Valeree Villanueva".

Douglas R. Hibbard
Chief, Initial Request Staff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Benjamin Wittes, Scott R. Anderson, and The Protect Democracy Project, Inc.

Plaintiff

v.

U.S. Department of Justice

Defendant

Civil Action No. **19-2823**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Justin Florence
The Protect Democracy Project, Inc.
15 Main Street, Suite 312
Watertown, MA 02472

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 9/20/2019

Signature of Clerk or Deputy Clerk

Civil Action No. 19-2823

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

United States District Court For the District of Columbia

Benjamin Wittes, Scott R. Anderson,
The Protect Democracy Project, Inc.

vs Plaintiff

U.S. Department of Justice

Defendant

Civil Action No. 19-2823

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for The Protect Democracy Project, Inc. certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of The Protect Democracy Project, Inc. which have any outstanding securities in the hands of the public:

None. The Protect Democracy Project, Inc. does not have any parent companies, subsidiaries, or affiliates with any such outstanding securities.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record


Signature

Justin Florence

Print Name

15 Main St., Suite 312

Address

Watertown, MA 02472

City

State

Zip Code

(202) 774-4234

Phone Number

988953

BAR IDENTIFICATION NO.